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February 22, 2000

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
Portals II, Filing Center, TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

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FEB 22 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Establishment of a Class A Television Service
MM Docket Nos. 00-10 and 99-292

Dear Ms. Salas

On behalf of Noe Corp., L.L.C. license of television station KNOE-TV, Monroe, Louisiana; Louisiana Television Broadcasting Corporation, licensee of television station WBRZ(TV), Baton Rouge, Louisiana; and Channel 3 of Corpus Christi, Inc., licensee of television station KIII(TV), Corpus Christi, Texas, transmitted herewith are an original and six (6) copies of their Reply Comments in the above-captioned rulemaking proceeding implementing the Community Broadcasters Protection Act of 1999.

If you have any questions concerning the Reply Comments, please direct them to the undersigned.

Very truly yours


Jerold L. Jacobs

Enclosure

cc: Ms. Wanda Hardy (w/diskette)
International Transcription Service (w/diskette)
Keith Larson, FCC, MMB, 2-C420
Shaun A. Maher, FCC, MMB, 2-A820

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BEFORE THE
Federal Communications Commission

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FEB 22 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Establishment of a Class A)	MM Docket No. 00-10
Television Service)	MM Docket No. 99-292
)	RM-9260

TO: The Commission

REPLY COMMENTS OF THREE TV LICENSEES
ENTITLED TO DTV MAXIMIZATION

NOE CORP. L.L.C., LOUISIANA TELEVISION BROADCASTING CORPORATION, and CHANNEL 3 OF CORPUS CHRISTI, INC. (together, the "Maximizers"), licensees of three full-power television stations in Monroe, Louisiana (Station KNOE-TV), Baton Rouge, Louisiana (Station WBRZ(TV)), and Corpus Christi, Texas (Station KIII(TV)), respectively, by their attorneys, pursuant to §1.415 of the Commission's Rules, hereby submit their Reply Comments concerning Paragraph 31 ("New DTV Service") of the Order and Notice of Proposed Rule Making ("NPRM"), FCC 00-16, released January 13, 2000, and the Comments filed in this proceeding pertaining thereto.

I. Introduction

1. In their February 10, 2000 Comments, the Maximizers maintain (¶¶ 3-5) that under the Community Broadcasters Protection Act of 1999 ("CBPA"), Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), Appendix I, *codified at* 47 U.S.C. §336(f), replication and maximization are cumulative interference-protection devices for full-power TV stations. Hence, the Maximizers fully support the Commission's proposed statutory interpretation in Paragraph 32 of the NPRM that Class A applicants must protect all stations seeking to replicate or

maximize their DTV operations, regardless of whether the DTV station's proposal involves "technical problems" within the meaning of Section (f)(1)(D) of the CBPA. In other words, the replication and maximization interference-protection provisions in Sections (f)(1)(D) and (f)(7)(A) for full-power DTV stations should be treated as cumulative interference protection devices that are not dependent upon each other. This is the only interpretation that is congruent with the intent of Congress to protect the ability of DTV stations to replicate and maximize their service areas.

2. Similarly, in Paragraphs 6-10 of their Comments, the Maximizers urge that the replication and maximization rights of full-power DTV stations should be protected under Paragraph 34 of the NPRM, even where full-power licensees are uncertain about their eventual DTV channel. This matter is of special concern to the Maximizers because each of them has a DTV allotment rulemaking proceeding pending in which it is proposing to substitute a different DTV channel for the frequency specified in the DTV Table of Allotments. The three proposals are summarized as follows:

<u>Call Sign</u>	<u>Docket No.</u>	<u>NTSC Chan.</u>	<u>Current DTV Allot.</u>	<u>Proposed DTV Allot.</u>
KNOE-TV	MM Doc. 99-265 (14 FCC Rcd 12384)	8	55	7
KIII(TV)	MM Doc. 99-277 (14 FCC Rcd 15242)	3	47	8
WBRZ(TV)	MM Doc. 99-317 (14 FCC Rcd 17816)	2	42	13

3. All three Petitions for Rulemaking were filed in 1999, the time has passed for comments and reply comments to be filed thereon, and no adverse comments or reply comments

were filed by LPTV licensees.¹ Nevertheless, the Maximizers believe that none of the proceedings will be concluded before the forthcoming deadline for filing Class A applications.

4. Thus, the Maximizers anticipate that they will not be in a position to file final maximalization applications by the May 1, 2000 deadline, because their pending DTV rulemaking proceedings will still be unresolved. Hence, the Maximizers urge in their Comments (¶¶s 8 and 9) that the Report and Order in this proceeding should require the Commission's analog and DTV engineering data bases to be annotated to provide DTV interference protection for all of the identified channels in their December 30, 1999 maximization letters of intent for six (6) months after the DTV transition has occurred, so that licensees in the Maximizers' dilemma will have ample time to amend their DTV maximization applications to finalize their post-transition DTV maximization and replication proposals.

II. Pending Petitions for Rulemaking Deserve Interference Protection

5. Upon further examination of the NPRM and the recently filed Comments of other parties, the Maximizers now focus upon a second threat to their ability to maximize their DTV service areas, namely the possibility that under Paragraph 31 of the NPRM, no protection will be given by the Commission to the DTV frequencies identified in the Maximizers' above-referenced rulemaking proposals, even though the relevant Petitions for Rulemaking were filed in 1999, were entered into the TV engineering data base in 1999, and were put out for comment by the Commission in 1999.

6. Paragraph 31 of the NPRM states that the CBPA requires Class A applicants to protect the DTV service areas of "stations subsequently granted by the Commission prior to the

¹ Comments opposing the allotment of DTV Channel 8, Corpus Christi, Texas, were filed by LPTV Channel 7, Corpus Christi -- and, shortly thereafter, withdrawn.

filing of a Class A application,” citing Section (f)(7)(A)(ii)(III). The rest of Paragraph 31 intimates that existing NTSC licensees, like the Maximizers, who have current DTV allotments but are proposing to change their DTV allotments, will therefore be treated as “New DTV Service” and will be accorded no interference protection against Class A applications that are merely filed before affected DTV allotment rulemaking proposals (and their implementing FCC Form 301–DTV applications) are granted. *The Maximizers respectfully maintain that the CBPA did not intend, and should not be interpreted, to accord such harmful treatment to full-power TV licensees.*

7. Historically, it is well established that Petitions for Rulemaking are normally accorded interference protection in the TV data base against subsequently filed new-station or station-modification applications from the date that such Petitions are filed. Indeed, in the FM service, prior to the Report and Order in MM Docket No. 91-348 (“Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments), 7 FCC Rcd 4917 (1992), the Commission gave priority to Petitions for Rulemaking that were filed after FM station applications on the theory that granting a new FM allotment or upgrading the class of an existing allotment served the public interest better than preferring a transmitter site specified in an application. In MM Docket No. 91-348, the Commission merely amended Section 73.208 of the Rules to prevent the acceptance of FM Petitions for Rulemaking filed after pending applications with which they interfered. Most importantly, unlike the implications of Paragraph 31 of the NPRM in this proceeding, the Commission did not accord preference to FM applications filed after FM Petitions for Rulemaking were filed.

8. Thus, given the Commission’s long history of protecting TV Petitions for Rulemaking from their filing date, and the fact that *the CBPA is as concerned with allowing full-power TV stations to maximize their DTV service areas as it is in allowing LPTV stations to*

attain Class A status, the Maximizers maintain the Paragraph 31 of the NPRM needlessly and erroneously interprets Section (f)(7)(A)(ii)(III) of the CBPA in a way which undermines the interference protection rights of NTSC full-power licensees like the Maximizers, who are involved in pending DTV allotment rulemaking proceedings.

9. Importantly, there is no specific language in the legislative history of the CBPA or in Section (f)(7)(A)(ii)(III) which requires the Commission to interpret the CBPA to strip pending Petitions for Rulemaking of their historical interference protection. Moreover, even if Section (f)(7)(A)(ii)(III) were to be interpreted by the Commission as applying to pending Petitions for Rulemaking, the language of that Section does not prevent the Commission from being tougher in its interference-protection requirements than the statute itself. In other words, while Section (f)(7)(A)(ii)(III) **prohibits** the Commission **from granting** a Class A license where interference would be caused to DTV service areas “of stations subsequently granted by the Commission prior to the filing of a Class A application,” the Section does not **require** the Commission **to grant** Class A applications which interfere with Petitions for Rulemaking or DTV applications that are outside of the time frame specified in the quoted language.

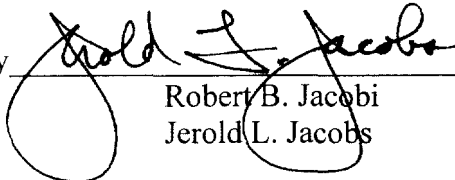
10. Thus, since the Commission has overall authority over interference protection matters and has discretionary leeway under the wording of Section (f)(7)(A) of the CBPA, the Maximizers urge that, consistent with the Commission’s historical treatment of TV Petitions for Rulemaking, the Commission should not treat pending Petitions for Rulemaking to change allotments as proposing “new” DTV service and should accord them interference protection against Class A applications from the date that the Petitions for Rulemaking were filed. In the event that such Petitions for Rulemaking are eventually denied, the Class A applicants or licensees can amend their pending Class A applications or file new applications to increase their service areas based on the elimination of the previous Petition for Rulemaking from the DTV

engineering data base. The Maximizers urge that this approach better balances the respective rights of existing full-power licensees and Class A applicants than what Paragraph 31 proposes (by implication) and better comports with the spirit of the CBPA and the paramount public interest.

WHEREFORE, in light of the foregoing, the Three DTV Maximizers respectfully request that the Commission should adopt a Report and Order in this proceeding consistent with these Reply Comments.

Respectfully submitted,

NOE CORP. L.L.C.
LOUISIANA TELEVISION BROADCASTING
CORPORATION
CHANNEL 3 OF CORPUS CHRISTI, INC.

By  _____
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Dated: February 22, 2000